Saffles Construction Corporation *and* Operative Plasterers' & Cement Masons' International Association of the United States and Canada, Local 797, AFL–CIO. Case 28–CA–16210

August 24, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND LIEBMAN

Upon a charge filed by the Union on December 2, 1999, the General Counsel of the National Labor Relations Board issued a complaint on January 28, 2000, against Saffles Construction Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. On March 17, 2000, the Respondent filed an answer to the complaint. On July 19, 2000, the Respondent withdrew its answer to the complaint.

On July 25, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On July 27, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all of the allegations in the complaint will be considered admitted.

On April 17, 2000, the Respondent filed a letter with the Region advising that the Respondent had filed for Chapter 7 bankruptcy on March 24, 2000. By letter dated July 19, 2000, the Respondent withdrew its answer to the complaint, stating that it agreed to entry of any judgment against it in this case and that it would comply with any Order of the Board issued as a result of its withdrawal of its answer. Such a withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.[1]

Accordingly, in light of the withdrawal of the Respondent's answer to the complaint, and in the absence of good cause being shown to the contrary, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is now, and at all material times has been, a Tennessee corporation with an office and principal place of business in Las Vegas, Nevada, where it is engaged in business as a specialty contractor. During the 12-month period ending December 2, 1999, the Respondent, in the course and conduct of its business operations, received gross revenues in excess of $500,000 and purchased and received at the Respondent's facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Nevada.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees employed by the Respondent performing work covered by the classifications set forth in Article 1 of the 1998-2000 collective-bargaining agreement, but excluding guards and supervisors as defined in the Act.

Since about 1997, and at all times material, the Union has been designated as the exclusive collective-bargaining representative of the unit, and since that date the Respondent has recognized the Union as such representative. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from July 1, 1998, to June 30, 2000.

At all times material, the Union, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On or about November 15, 1999, by letter, the Union requested the Respondent to furnish the Union with the following information covering the period from January 1, 1998, to the date of its request:

[1] See *Maslin Transport*, 274 NLRB 529 (1985). Although the Respondent indicated that it has filed for Chapter 7 bankruptcy, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id. and cases cited therein.

1. A list of each of the projects on which bargaining unit employees have worked during that period;

2. the identity of the general contractor on each project;

3. the identity of the employees working on each project; and

4. the number of hours worked by and wages paid to each employee on the project.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since on or about November 15, 1999, the Respondent has failed and refused to furnish the Union with the information it requested.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has failed and refused, and is continuing to fail and refuse, to bargain collectively with the Union as the exclusive collective-bargaining representative of the unit, and has thereby engaged in and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

2. By the acts and conduct described above the Respondent has interfered with, restrained, or coerced, and is continuing to interfere with, restrain, or coerce, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and the Respondent thereby has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. The acts and conduct described above have a close, intimate, and a substantial relation to trade, traffic, and commerce within the meaning of Sections 2(6) and (7) of the Act.

4. The acts and conduct of the Respondent described above constitute unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, which affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed to provide requested information to the Union which is necessary and relevant to the performance of its functions as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to provide the information requested to the Union. In view of the Respondent's representation that it ceased operations on November 30, 1999, we shall provide for mailing of the notice to employees so that they will be informed of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Saffles Construction Corporation, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide necessary and relevant information to the Union, on request.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the information requested by the Union on or about November 15, 1999.

(b) Within 14 days after service by the Region, duplicate and mail, at its own expense, and after being signed by the Respondent's authorized representative, signed and dated copies of the attached notice marked "Appendix"[2] to the Union and to all current and former employees employed by the Respondent at any time since November 15, 1999.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 24, 2000

John C. Truesdale,	Chairman
Sarah M. Fox,	Member
Wilma B. Liebman,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
Mailed by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to mail and abide by this notice.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT fail and refuse to provide necessary and relevant information to the Union, on request.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union in a timely manner the information requested by the Union on or about November 15, 1999.

SAFFLES CONSTRUCTION CORPORATION